

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.479 OF 2005

Rajdatt Anant Rane

...Appellant

Vs.

Smt.Vijaya Vijay Rane  
(since deceased through L.Rs.)

...Respondents

Mr.S.S.Redekar for the Appellant  
Mr.R.A.Thorat for the Respondents.

**CORAM: A.S.OKA, J.**  
**DATED: APRIL 25,2005.**

**P.C.:**

1. Heard Counsel appearing for the parties. The original Plaintiff has taken exception to the impugned order dated 7th March 2005 passed by the Trial Court by which Notice of Motion No.5264 of 2004 is dismissed by the learned Trial Judge. It is not in dispute that the Appellant-Plaintiff had taken out Notice of Motion No.1038 of 1997 in the same suit praying for injunction restraining the Respondents from disturbing the alleged possession of the Appellant-Plaintiff over the suit premises i.e. Room No.49. The Respondent-Defendant took out Notice of Motion No.2042 of 1997 for injunction against the Appellant praying that the Appellant be restrained from entering upon or remaining in the suit premises. By Judgment and Order dated 9th October 1997 the Trial Court dismissed the Notice of Motion of the Appellant and allowed the Notice of Motion of the Respondent. An Appeal preferred by the Appellant against the said

Judgment was dismissed for default. The present Notice of Motion No.5264 of 2004 is taken out by the Appellant-Plaintiff for appointment of Court Receiver with a direction to put the Appellant and his family members in possession of the premises/Room No.49. There is separate Notice of Motion No.5173 of 1999 taken out by the Appellant-Plaintiff praying for relief of restoration of the possession of the suit premises and the said Notice of Motion is still pending.

2. Considering the fact that earlier Notice of Motion filed by the Appellant was dismissed by the Trial Court and separate Notice of Motion taken out by the Appellant for restoration of the possession is pending, no fault can be found with the approach of the Trial Court by which the prayer for appointment of Court Receiver made by Notice of Motion no.5264 of 2004 was rejected by the Trial Court. There is no error in the said order. Accordingly, Appeal from Order is dismissed with no order as to costs.

3. It is made clear that Notice of Motion No.5173 of 1999 will be decided by the Trial Court on its own merits.

4. Parties to act upon an authenticated copy of this order.

**Judge.**